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Plaintiff Theresa D. Lara

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THERESA D. LARA

NO. CV-11-00607-RS

## Plaintiff

Date: June 7, 2012

V.

Time: 1:30 p.m.  
Dept: Courtroom 3, 17<sup>th</sup> Floor  
Judge: Hon. Richard Seeborg

COUNTY OF SANTA CLARA;  
SHERIFF LAURIE SMITH;  
DEPUTY CRAIG, # 1869; DEPUTY  
MORENO; AND DOES 3-20:

## Defendants.

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
SUMMARY JUDGMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

TO DEFENDANTS COUNTY OF SANTA CLARA, SHERIFF LAURIE  
SMITH; DEPUTY CRAIG, DEPUTY MORENO AND TO THEIR ATTORNEYS  
OF RECORD:

PLEASE TAKE NOTICE THAT at 1:30 p.m., on June 7, 2012, in  
Courtroom 3, 17<sup>th</sup> Floor, United States Courthouse, 450 Golden Gate Avenue, San  
Francisco, California 94102, or as soon thereafter as this matter may be heard

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Summary Judgment

1 Plaintiff Theresa D. Lara will, and hereby does, move for an order granting  
2 Plaintiff summary judgment on the ground that there is no genuine issue as to any  
3 material fact and that Plaintiff is entitled to judgment as a matter of law.

4 This motion is based on this notice of motion and motion; the memorandum  
5 of points and authorities and declaration of plaintiff Theresa D. Lara, filed  
6 concurrently herewith; and all pleadings and papers on file in this action; and on  
7 such other matters as may be presented to the Court at the hearing on this matter.

8 Plaintiff respectfully requests the Court grant Plaintiff's motion for summary  
9 judgment.

10

11 STATEMENT OF FACTS

12 This case involves the situation – resolved some 30 years ago by the  
13 California Supreme Court in Arrieta v. Mahon, 31 Cal.3d 381, 389 (1982) – in  
14 which a tenant who was not named in, or served with, an eviction lawsuit is evicted  
15 by law enforcement officers in contravention of clearly established constitutional  
16 law.

17 In this case, as in Arrieta, Plaintiff was evicted from her home without the  
18 benefit of constitutional due process, where an eviction lawsuit failed to name  
19 Plaintiff herein as a party defendant, notwithstanding that Plaintiff resided at the  
20 subject property at the time the eviction lawsuit was filed.

21

22 LEGAL ARGUMENT

23 I. APPLICABLE LAW

24 A. Arrieta v. Mahon

25 Arrieta v. Mahon, like this case, dealt with an eviction of an unnamed  
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1 occupant who resided at the subject property prior to the filing of an unlawful  
 2 detainer (eviction) action.

3 Regarding the rights of a tenant who resided at a property before an eviction  
 4 lawsuit was filed, the California Supreme Court has said:

5       The right to a pre-eviction hearing is firmly established in  
 6 unlawful detainer actions. [Citation omitted] Notice “reasonably  
 7 calculated . . . to apprise interested parties of the pendency of the action  
 8 and afford them an opportunity to present their objections” is, of course,  
 9 an essential element of the right to a hearing. [Citation omitted] Those  
 10 who are evicted from their homes pursuant to a writ issued against  
 11 another receive no notice or hearing whatever – unless by sheer good  
 12 fortune they discover the pendency of the action and are able to block it  
 13 through an extraordinary remedy. Even those who know of the action  
 14 may not know that their own right to possession is in jeopardy if they are  
 15 not named in the writ or accompanying papers. In either case, their  
16 eviction is manifestly contrary to the strictures of the Fourteenth  
Amendment of the United States Constitution and article I, section 7 of  
17 the California Constitution. [Underline added]. Arrieta v. Mahon, 31  
 18 Cal.3d 381, 389 (1982) (underline added).

¶ Once the marshal discovers that a person not named in the writ  
 of execution claims a right to possession accruing before the unlawful  
 detainer proceeding commenced, he may not evict that person without  
19 a further order of court. Id., at 390 (underline added).

This case, exactly as in Arrieta, involves eviction of an unnamed tenant who  
 resided at the subject premises prior to the filing of the eviction action. Just as the  
 marshal’s eviction in Arrieta “was manifestly contrary to the strictures of the  
 [Constitution]” absent further court order, so too was the Government Defendants’  
 eviction of Plaintiff in this case.

## B. California Code of Civil Procedure § 1174.3

### 1. Section 1174.3 Generally

Section 1174.3 states in relevant part:

Unless a prejudgment claim of right to possession has been served  
 upon occupants in accordance with Section 415.46, any occupant not  
 named in the judgment for possession who occupied the premises on the  
 date of the filing of the action may object to enforcement of the judgment

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against that occupant by filing a claim of right to possession as prescribed in this section. A claim of right to possession may be filed at any time after service or posting of the writ of possession pursuant to subdivision (a) or (b) of Section 715.020, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. Filing the claim of right to possession shall constitute a general appearance. . . . An occupant or tenant who is named in the action shall not be required to file a claim of right to possession to protect that occupant's right to possession of the premises. C.C.P. § 1174.3(a).

A claim of right to possession is effected by . . . [p]resenting a completed claim form . . . in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section. . . . C.C.P. 1174.3(c)(1-2) (underline added).

The Government Defendants claim their actions were lawful because “Plaintiff did not present a claim of right to possession to the [defendant] Deputies when they arrived to vacate the Apartment,” (Defendants’ Motion for Summary Judgment, at 11:16-17), thus apparently conceding that “a prejudgment claim of right to possession” was not served, as contemplated in section 1174.3(a).

## 2. Section 1174.3 as Applied to this Case

A “Claim of Right of Possession” is a California Judicial Council form which requires certain data for its completion. Such data includes the case name and case number. *See*, Request for Judicial Notice.

Plaintiff alleged in her Complaint that she: (a) was never served or otherwise acquired any court papers relating to the eviction prior to the date on which the eviction was effectuated; (b) asked her sister, Mrs. Valdez, a defendant in the eviction case, for a copy of eviction court papers, if in fact an eviction was pending; and (c) searched the Santa Clara Superior Court’s web site – without success – for any reference to an eviction action involving Mrs. Valdez.

Notwithstanding her due diligence, Plaintiff was unable to confirm that an eviction case actually was pending. Lacking knowledge of the case name and case

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1 number which were needed to complete a Claim of Right of Possession form –  
 2 section 1174.3(c)(1-2) requires presentation of a “completed claim form”  
 3 (underline added) – Plaintiff simply did not have the ability to avail herself of the  
 4 section 1174.3 procedure.

5           3.     Constitutional Due Process and Section 1174.3

6       In Arrieta, the California Supreme Court describes the section 1174.3  
 7 procedure in the paragraph which immediately follows one which states “[n]otice  
 8 ‘reasonably calculated . . . to apprise interested parties of the pendency of the  
 9 action and afford them an opportunity to present their objections’ is, of course, an  
 10 essential element of the right to a hearing” [and that failure to give such notice] “is  
 11 manifestly” unconstitutional. Nowhere in Arrieta does the Court suggest that a  
 12 “manifestly” unconstitutional violation of procedural due process can be cured ex  
 13 post facto by requiring persons such as Plaintiff to avail themselves of the  
 14 procedure codified in section 1174.3. The Court also does not suggest that a  
 15 careless landlord can shift the burden of giving notice of an eviction action to a  
 16 tenant such as Arrieta, or to Plaintiff in this case.

17      Section 1174.3 merely codifies a procedure whereby a unnamed tenant can  
 18 intervene as a party defendant, recognizing that unnamed residents, while perhaps  
 19 not necessary parties to an eviction action, have legitimate due process rights  
 20 which can be protected through intervention.

21      The Court’s explicit statement in Arrieta that notice of an eviction action  
 22 must be “reasonably calculated . . . to apprise interested parties of the pendency of  
 23 the action” (underline added) further supports an interpretation that section 1174.3  
 24 codifies a right to intervene, as an eviction action cannot be understood as still  
 25 “pending” in any real or meaningful sense once a writ of possession has issued and

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1 the police order all occupants to vacate the property.

2       Section 1174.3 simply codifies a procedure whereby an unnamed tenant may  
 3 – but is not required to – intervene in an eviction action; the statute does not –  
 4 indeed cannot – abrogate an unnamed tenant’s constitutional right to procedural  
 5 due process.

6 II. CONSTITUTIONAL VIOLATIONS

7       A. Due Process

8       The California Supreme Court has held in unequivocal terms that the  
 9 eviction of persons from their homes pursuant to a writ of possession issued  
 10 against another, and who received no notice or hearing, is contrary to due process.

11 Arrieta v. Mahon, 31 Cal.3d 381 (1982).

12       B. Unreasonable Seizure

13       An arrest can only be made upon probable cause, which depends “upon  
 14 whether, at the moment the arrest was made . . . the facts and circumstances within  
 15 [the officers’] knowledge and of which they had reasonably trustworthy  
 16 information[,] were sufficient to a prudent man in believing that the [arrestee] had  
 17 committed or was committing an offense.” Beck v. Ohio, 379 U.S. 89, 91 (1964).

18       Here, it is undisputed that the defendant sheriff’s deputies, on the date in  
 19 question, arrived at the apartment at which Plaintiff resided and commanded  
 20 Plaintiff to vacate the apartment. The defendant deputies were in full uniform,  
 21 each armed with holstered handguns. As alleged in her Complaint:

22       [Plaintiff] politely informed defendant deputy sheriffs, and each of them,  
 23 that Plaintiff had not been served with legal process relating to [the  
 24 eviction]. . . .

25 ¶ One of said sheriff’s deputies [then] told Plaintiff that not having been  
 26 served with court papers and/or the absence of Plaintiff’s name on court

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1 papers was/were not a fact/facts which would cause said defendant  
2 sheriff's deputies to rescind or withdraw their order that Plaintiff vacate  
apartment. . . .

3 ¶ Plaintiff, because she was ordered by defendant deputy sheriffs, and  
4 each of them, to vacate the subject premises – rather than simply  
5 requested to depart voluntarily – subjectively, and reasonably, believed  
6 that failure to comply with said order would result in Plaintiff's forcible  
removal from said premises and/or Plaintiff's arrest for resisting,  
obstructing, or delaying a peace officer in the performance of said  
officer's duties.

7 ¶ Plaintiff [then] complied with the order by defendant sheriff's deputies  
to vacate apartment.

9 Although the defendant deputy sheriffs did not arrest Plaintiff, nor did they  
10 even physically touch Plaintiff, said defendants nevertheless effected a  
11 constitutional "seizure" of Plaintiff through the use of a verbal command which  
12 directed Plaintiff to vacate the apartment.

13 Plaintiff had every reason to believe – and did believe – that the defendant  
14 deputies, in their effort to obtain compliance with their verbal command, would  
15 have escalated their verbal seizure of Plaintiff (e.g., verbal command that Plaintiff  
16 vacate the apartment) to an actual physical seizure (e.g., perhaps arresting Plaintiff  
17 for violating California Penal Code § 148, interfering/obstructing a peace officer),  
18 had Plaintiff not "voluntarily" complied with the defendant deputies' verbal  
19 command to vacate the apartment. Thus, the implicit understanding that the  
20 deputies would use physical force, if necessary, to achieve compliance with their  
21 command constitutes a constitutional seizure.

### 22 III. COUNTY POLICY

23 Defendant County of Santa Clara asserts that any injury suffered by Plaintiff  
24 was not a product of any County policy, custom or practice. There is ample  
25 evidence to the contrary.

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1           Defendant County, in response to a request for documents which sought:

2

3           Request No. 2:

4           Any and all DOCUMENTS which constitute DEFENDANT's  
 5 policies and/or procedures CONCERNING the handling or conduct of  
 6 eviction/unlawful detainer cases by deputy sheriffs. This request  
 7 includes, but not limited to Policies and Procedures, General Orders,  
 8 Training Bulletins, and the like.

9           Request No. 3:

10          Any and all DOCUMENTS which constitute or reflect training by,  
 11 or on behalf of, DEFENDANT of its sheriffs deputies on the  
 12 requirements of, or holding in, Arrieta v. Mahon, 31 Cal.3d 381 (1982).

13          produced a document entitled "Office of the Sheriff Santa Clara County[,] Sheriff  
 14 Laurie Smith[,] Civil Training Manual." The section of said manual which  
 15 discusses evictions states, in relevant part:

16          From time to time, you will be notified of circumstances that halt  
 17 or stay the completion of an eviction. This may be a bankruptcy, court  
 18 ordered stay or a stipulated agreement among the parties to halt the  
 19 eviction. A claim of right of possession may be filed that stops the  
 20 eviction for a short period of time. This claim may be given to you in the  
 21 field or filed with our office prior to the eviction. If you receive the  
 22 claim in the field make sure the person making the claim is not named on  
 23 the writ of possession. If the person is on the writ no claim may be  
 24 made. The person making the claim must be at least 18 years old and  
 25 show I.D. to prove the age. Once you return to the office at the end of  
 26 the day the original claim of right of possession will be given to one of  
 27 the sheriffs technicians to be delivered to court. There must not be any  
 28 delay in the processing of the right of possession claim. Decl. of  
 Attorney for Plaintiff. See, Decl. of Attorney for Plaintiff.

29          Conspicuously absent from the training manual is any discussion of an  
 30 unnamed occupant's right to due process in cases where, as here, it was not  
 31 reasonably possible for an unnamed occupant to have completed a claim form.  
 32 Although it is true that there is no explicit language in Defendant County's training  
 33 manual that instructs its deputies to ignore the 30-year old precedent of Arrieta, the  
 34 absence of any discussion concerning constitutional due process in this type of

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1 eviction case constitutes, at best, a failure by defendant County to train or  
2 supervise its deputies and, at worst deliberate indifference to the holding in Arrieta.

3 IV. CALIFORNIA CIVIL CODE SECTION 52.1

4 California Civil Code § 52.1 provides authority for lawsuits which allege a  
5 violation of rights “secured by the Constitution or laws of the United States, or of  
6 the rights secured by the Constitution or laws of California. . .”

7 As discussed above, Plaintiff’s right to due process of law and to be free  
8 from unreasonable seizure are clearly implicated in this lawsuit.

9  
10 Date: January 19, 2012

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A Professional Corporation

11  
12 /s/ Anthony F. Earle

13  
14 By: Anthony F. Earle  
15 Attorney for Plaintiff